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THE ADMINISTRATION OF JUSTICE

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Application of international standards concerning the human rights of detained juveniles

Report prepared by the Special Rapporteur, Mrs. Mary Concepción Bautista, pursuant to Sub-Commission resolution 1990/21

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INTRODUCTION

1. By its resolution 1985/19 of 29 August 1985, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Secretary-General to invite Governments, United Nations organs, specialized agencies, intergovernmental organizations, the International Committee of the Red Cross and non-governmental organizations to submit information concerning the incarceration of children under the age of 18 with adult prisoners, and to solicit their views on the ways and means of preventing this practice. It further requested the Secretary-General to compile the information received and to submit it in a report to the Sub-Commission at its thirty-ninth session.

2. In accordance with this resolution, the Secretary-General, on 10 July 1986, addressed appropriate inquiries to Governments, United Nations organs and organizations as mentioned above. The substantive replies that were received were submitted for the consideration of the Sub-Commission at its thirty-ninth session (document E/CN.4/Sub.2/1987/30 and Add.1). By its resolution 1989/31 of 1 September 1989, entitled "Application of international standards concerning the human rights of detained juveniles", the Sub-Commission, considering that document E/CN.4/Sub.2/1987/30 had not yet been discussed and that further information had been made available to the Secretary-General on the question of children deprived of their liberty, requested the Secretary-General to update that document for consideration by the Sub-Commission at its forty-second session. It also decided to appoint Mrs. Mary Concepción Bautista to prepare a report, without financial implications, on the application of international standards concerning the human rights of detained juveniles, in particular the separation of juvenile and adult offenders in penal institutions, detention pending trial, least possible use of institutionalization, and the objectives of institutional treatment.

3. In accordance with resolution 1989/31, the Secretary-General, on 7 March 1990, addressed appropriate inquiries to Governments, specialized agencies and non-governmental organizations and sent out a questionnaire on the application of international standards concerning the human rights of juveniles deprived of their liberty. The replies received were submitted to the Sub-Commission at its forty-second session (document E/CN.4/1990/25 and Add.1 and 2).

4. In its resolution 1990/21, the Sub-Commission noted that the replies had not been incorporated in the preliminary report of the Special Rapporteur for lack of sufficient time. It expressed its conviction that additional information should be sought from Governments and non-governmental organizations and requested the Secretary-General to give the questionnaire the widest possible circulation amongst Governments, specialized agencies and non-governmental organizations so that the replies could be included in a report to its forty-third session and decided to extend the mandate of the Special Rapporteur until its forty-third session.

5. In accordance with the mandate provided by Sub-Commission resolution 1990/21, paragraph 1, notes verbales and letters were sent on 7 December 1990 to Governments, specialized agencies and non-governmental

organizations soliciting their views on the subject of international standards concerning the human rights of juveniles deprived of their liberty.

6. By 30 May 1991, the Secretary-General had received replies from the following Governments: Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Bolivia, Brunei Darussalam, Bulgaria, Chad, China, Colombia, Congo, Costa Rica, Cuba, Denmark, Egypt, El Salvador, Finland, France, Guyana, Iraq, Jamaica, Japan*, Jordan, Madagascar, Mali, Malta, Mexico, Panama, Philippines, Portugal, Senegal, St. Vincent and the Grenadines, Sweden, Switzerland, Thailand, Tunisia, Tuvalu, Ukrainian SSR, United Arab Emirates, United States of America, Uruguay, Venezuela, Yugoslavia.

7. Replies were also received from the following United Nations bodies: the Food and Agriculture Organization, the United Nations Educational and Cultural Organization and the World Health Organization.

8. In addition, the following non-governmental organizations replied to the questionnaire: Anglican Consultative Council, Friends World Committee for Consultation, International Centre of Sociological, Penal and Penitentiary Research and Studies, International Commission of Jurists, International Council for Adult Education, International Committee of the Red Cross, International Federation of Social Workers, International Fellowship of Reconciliation, International Institute of Humanitarian Law, International Juridical Organization, Inter-Parliamentary Union, Rädda Barnen International, Regional Council on Human Rights in Asia, Union Internationale du Notariat Latin, Union des Magistrats Senegalais, World Association of Children's Friends, World Movement of Mothers.

9. The Special Rapporteur would like to thank Governments, United Nations bodies, specialized agencies, intergovernmental and non-governmental organizations for their submission of information and material concerning the subject of her study. She considers the information received very instructive, comprehensive and supportive. The present report is based on that material.

10. In addition, the Special Rapporteur also took into account other material available to her, especially the relevant documentation of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

11. The Congress, held at Havana, Cuba from 27 August to 7 September 1990, provided an exhaustive analysis of the worldwide situation and circumstances of juvenile delinquency, its prevention and the protection of the young. (See, inter alia, documents A/CONF.144/4 and 16). Two new instruments, the draft United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the draft United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, subsequently endorsed by the

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* Replies provided by the Supreme Court of Japan.

General Assembly, were considered by the Eighth Congress. Moreover, the Congress noted that there seemed to be a general trend for young people to commit offences at an earlier age and often to commit serious offences that were largely considered to be adult crimes. Those who committed serious offences represented a group for whom rehabilitation would be extremely difficult. The Eighth Congress also considered ways and means of promoting international cooperation so as to develop effective policies and structures for the protection of young persons at social risk and the administration of juvenile justice.

I. SCOPE OF THE MANDATE

12. At its forty-fifth session, the General Assembly, by its resolution 45/112 of 14 December 1990, adopted the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and, by resolution 45/113 of 14 December 1990, the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. In the context of these two instruments, the General Assembly invited the Sub-Commission to consider the new norms with a view to promoting their application.

13. It is generally agreed today that juvenile delinquency is closely interrelated with certain socio-economic problems often associated with poverty, unemployment, inadequate shelter and housing, breakdown of traditional family structures and relations, urbanization, insufficient social services, inadequate schooling and lack of professional training facilities, and many other related aspects.

14. The two new instruments adopted by the General Assembly contain a set of principles intended to prevent juvenile delinquency at an early stage, that is before young persons come into conflict with the law. It is for that reason that they pay special attention to situations of "social risk" and reflect on disturbances affecting the social integration of young persons. The emphasis that the international community is placing on the identification of situations of social risks, their causes and circumstances, and the development of juvenile delinquency requires a broader investigation into the application of international standards at the national level on the one hand, and their adherence in practice, particularly in connection with possible preventive social measures to eliminate or at least reduce causes of juvenile criminality, on the other. The Special Rapporteur believes that in the light of the present international discussion, the consideration of the application of international standards concerning human rights of detained juveniles has also to examine measures taken to facilitate the social integration of young offenders, as well as steps to prevent juvenile delinquency by, inter alia, creating conditions that may help young persons enjoy their economic and social rights.

15. There, a more in-depth study would be required, particularly on ways and means of promoting international cooperation in implementing the existing norms and standards, in accordance with the specific situation and socio-economic requirements, in order to develop effective policies in the administration of juvenile justice.

16. The Special Rapporteur would like, therefore, to invite the Sub-Commission to consider the present report and, in the light of the invitation made by the General Assembly in resolutions 45/112 and 45/113, the Special Rapporteur would like to underline the importance of a new study on the issues mentioned in the above resolutions.

II. OVERVIEW OF THE PERTINENT INTERNATIONAL STANDARDS

17. Various international standards apply to the human rights of juveniles deprived of their liberty.

18. The International Covenant on Civil and Political Rights, adopted by the General Assembly (resolution 2200 A (XXI) of 16 December 1966), contains basic principles on the right to liberty and respect for the inherent dignity of the human person while deprived of his liberty. It is the foundation of all other applicable rules and principles.

19. The Standard Minimum Rules for the Treatment of Prisoners ("Standard Minimum Rules"), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, seek to set out what is generally accepted as being good principles and practices in the treatment of prisoners.

20. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by the General Assembly (resolution 40/33 of 29 November 1985), refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system and, in turn, will reduce the harm that may be caused by any intervention.

21. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Body of Principles"), which was adopted by the General Assembly (resolution 43/173 of 9 December 1988), elaborates on the protection of the human rights of all persons under any form of detention or imprisonment.

22. The Convention on the Rights of the Child, adopted by the General Assembly (resolution 44/25 of 20 November 1989), reaffirms the fact that because of their vulnerability, children need special care and protection.

23. The United Nations Standard Minimum Rules for Non-custodial Measures ("The Tokyo Rules"), adopted by the General Assembly (resolution 45/110 of 14 December 1990), provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

24. The United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"), adopted by the General Assembly (resolution 45/112 of 14 December 1990), intend to promote the prevention of juvenile delinquency, paying special attention to the socio-economic environment.

25. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("United Nations Rules") have been adopted by the General Assembly (resolution 45/113 of 14 December 1990) with the intention of establishing minimum standards for the protection of juveniles deprived of their liberty.

26. The last three instruments mentioned above were not taken into consideration in the analysis of the replies to the questionnaire because their adoption followed the submission of the questionnaire.

27. As regards the contents of this study, the following standards are applicable in particular.

A. The juvenile justice system

28. Article 24.1 of the International Covenant on Civil and Political Rights postulates that every child shall have the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

29. Principle 5.2 of the Body of Principles says that measures applied under the law and designed solely to protect the rights and special status, inter alia, of juveniles, shall not be deemed to be discriminatory.

30. According to rule 2.3 of The Beijing Rules efforts shall be made to establish, in each national jurisdiction, inter alia a set of laws, rules and provisions especially applicable to juvenile offenders.

31. In article 40.1 of the Convention on the Rights of the Child, States parties recognize the right of every child alleged as accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. According to article 40.3 of the same Convention States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as accused of, or recognized as having infringed the penal law.

32. According to rule 1 of the United Nations Rules, the juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort. Rule 2 of the United Nations Rules underlines that deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases.

B. Definition of a juvenile and age of criminal responsibility

33. Rule 3.1 of The Beijing Rules says that the Rules for the Administration of Juvenile Justice shall not only be applied to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

34. The same rules do not suggest any specific age limit for the age of criminal responsibility, although it is emphasized in rule 4.1 that the beginning of the age of criminal responsibility for juveniles should not be fixed at too low an age level.

35. Article 40.3(a) of the Convention on the Rights of the Child seeks the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

C. Detention pending trial

36. According to article 9 of the International Convention on Civil and Political Rights, everyone has the right to liberty and security of person and, therefore, shall not be subjected to arbitrary arrest or detention. Article 9.3 deals with detention pending trial and says that it shall not be the general rule that persons awaiting trial shall be detained in custody. Article 9.4 entitles anyone who is deprived of his liberty by arrest or detention to take proceedings before a court to decide on the lawfulness of his detention.

37. Article 10.2(b) of the same Convention states that accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

38. Rule 85(2) of the Standard Minimum Rules indicates that young prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

39. Rule 13 of The Beijing Rules deals with detention pending trial. Rules 13.1 and 13.2 postulate that detention pending trial shall only be used as a measure of last resort and for the shortest possible period of time and whenever possible shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. According to rule 13.4, juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults. Rule 13.5 describes all necessary individual assistance juveniles shall receive while in custody.

40. According to principle 8 of the Body of Principles, persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

41. Article 37(c) of the Convention on the Rights of the Child, postulates that States parties shall ensure that every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.

42. Rules 17 and 18 of the United Nations Rules cover the issue of juveniles under arrest or awaiting trial. Rule 17 says that detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Rule 18(b) indicates that juveniles should be provided with opportunities to pursue work, with remuneration, and continue education or training.

D. Least possible use of institutionalization

43. Rule 11 of The Beijing Rules describes alternatives to dealing with juvenile offenders without resorting to formal trial by the competent authority, such as community-based diversion.

44. Rules 14-22 of the same Rules deal with measures relating to adjudication and disposition. More specifically, rule 17.1 reveals guiding principles in adjudication and disposition. Rule 17.1(b) encourages the use of alternatives to institutionalization to the maximum extent possible. Rule 18.1 elaborates on the disposition measures that are possible so as to avoid institutionalization to the greatest extent possible. Rule 19.1 underlines that the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

45. Rules 23-25 further describe non-institutional treatment.

46. Article 40.4 of the Convention on the Rights of the Child mentions that a variety of dispositions and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being.

E. Objectives of institutional treatment

47. Article 71(5) of the Standard Minimum Rules deals with vocational training for prisoners, especially for young persons.

48. Article 77(1) of the same Rules says that education of young prisoners shall be compulsory and that special attention shall be paid to it by the administration.

49. Rules 26-29 of The Beijing Rules relate to institutional treatment. More specifically, rule 26 describes the objectives of institutional treatment such as providing care, protection, education and vocational skills with a view to assisting juveniles to assure socially constructive and productive roles in society. In article 40.1 of the Convention on the Rights of the Child, States parties recognize the desirability of promoting the child's reintegration. Article 40.4 lists a variety of dispositions to ensure that children are dealt with in a manner appropriate to their well-being.

F. Separation of juveniles and adults in penal institutions

50. According to article 10.3 of the International Covenant on Civil and Political Rights, juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

51. Article 8(d) of the Standard Minimum Rules postulates that young prisoners shall be kept separate from adults.

52. Rule 26.3 of The Beijing Rules underlines that juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

53. Article 37(c) of the Convention on the Rights of the Child postulates that every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.

III. NATIONAL LEGISLATIONS ON JUVENILE JUSTICE AND THEIR COMPATIBILITY WITH THE INTERNATIONAL INSTRUMENTS

Summary of the information provided by Governments

A. The juvenile justice system

54. According to the replies received, special juvenile courts or councils exist in many countries (Argentina, Austria, China, Colombia, Congo, Egypt, France, Iraq, Jordan, Mali, Malta, Saint Vincent and the Grenadines, Senegal, Switzerland, Tunisia). In one country (Mexico), administrative bodies, not courts, exist specifically for juveniles. In China, juvenile courts are subsidiary to the people's criminal courts. In Japan, family courts are the specialized courts with jurisdiction over all juvenile cases. Another country (Yugoslavia), explains that all courts also have juvenile councils made up of jurors who are or have been teachers, professors or other professionals experienced in juvenile education. One country (Bangladesh), provides juvenile courts, but if they are unavailable other specialized courts can consider juvenile cases. Another country (Costa Rica), has juvenile courts, but other bodies have jurisdiction in deciding to detain a juvenile pending trial. One country (Uruguay), mentioned that juvenile courts exist, but the judges are not specially trained and the Government recognizes that they should be. Several countries which have juvenile courts (Bolivia, El Salvador, Panama, Thailand, Venezuela) acknowledge that there are not enough to sufficiently handle all juvenile cases; two of these countries (El Salvador, Panama) are currently creating more juvenile courts. One country (Madagascar), does not have a juvenile court system, but an ordinance exists to provide specialization. A few countries have no juvenile court system (Bahrain, Brunei Darussalaam, Cuba, Denmark, Finland, Guyana, Philippines, Sweden, Tuvalu, United Arab Emirates). In one of these countries (Sweden), it is stated that cases involving persons who are under 21 shall always be processed without delay. In another (Philippines), the juvenile court system was abolished in 1983, and there is now a move towards the re-establishment of juvenile courts . In countries where specialized courts are not provided for juveniles, sometimes other bodies such as juvenile panels (Bahamas), juvenile councils (Yugoslavia) or family courts (Japan) hold responsibility for juvenile detention.

Compatibility

55. Some countries are undergoing a process of restructuring of juvenile justice legislation in order to eliminate obsolete approaches which tended to violate basic human rights such as the presumption of innocence and the principle of proportionality of the sentence. Thus, the creation of juvenile courts represents a positive development toward an improvement of the protection of juvenile rights.

56. On the basis of the replies received, the Special Rapporteur remarks that most of the countries comply with the pertinent international instruments which state that in the interest of just juvenile penal procedure, specialized courts or institutions should be established for the administration of justice.

57. Where no specialized courts are present, more information should be obtained to determine the reasons why. Also, it should be explored how the institution of juvenile courts could be better promoted.

58. Some of the countries have indicated that they do not have enough juvenile courts to handle all cases or that the judges are not specially trained. The Special Rapporteur finds it extremely helpful that the countries have stated that they are aware of these issues; this, she thinks, is the first step in the promotion of the existence of a juvenile justice system.

B. Definition of juvenile and age of criminal responsibility

59. According to the replies received, the absolute minimum age for criminal responsibility can vary from seven years of age (Bahamas, Bahrain, Bangladesh, Brunei Darussalam, Egypt, Switzerland, Thailand, Tunisia and the United Arab Emirates) to 18 years of age (Congo, Iraq, Mexico, Venezuela). Two countries (France and Uruguay) have no minimum age limit.

60. Many countries (Argentina, China, Cuba, Japan, Jordan, Madagascar, Mali, Mexico, Senegal, Switzerland, Thailand, Uruguay, Yugoslavia) have set more than two age limits. Intermediary categories, such as "young adult", "children and juveniles" and "prepubescent" are often used. In some cases, the kind and seriousness of the crime are taken into account by the court. In some countries, more lenient sentences or educational measures than those provided for an offence may be pronounced on persons who have already reached the age of criminal responsibility (Sweden, Uruguay and Venezuela). In one country (Cuba), special provisions for the imposition, adjustment and execution of penalties for juveniles up to the age of 27 years have been set up.

61. In several countries (Argentina, Bahamas, Chad, China, Colombia, Congo, Egypt, France, Iraq, Mali, Malta, Mexico, Panama, Senegal, Switzerland, Thailand, Tunisia, Ukrainian SSR, United Arab Emirates, Uruguay, Venezuela, Yugoslavia), 18 years is the age at which a person charged with an offence may be tried as an adult. This is 21 years in the Philippines and Sweden, 20 in Cuba, 19 in Austria and 17 in Costa Rica, Guyana, Jamaica. The age at which a person charged with an offence may be tried as an adult often coincides with the so-called age of majority.

62. The main conditions under which juveniles are tried as adults include complicity with adults, felony and homicide. Conditions and procedures of this kind exist in ten countries (Bahamas, Chad, Guyana, Jamaica, Jordan, Madagascar, Philippines, Saint-Vincent and the Grenadines, Thailand, Yugoslavia).

63. In several countries juveniles may be tried for "status offences", that is any specific behaviour which would not be punishable if committed by an adult. Some measures are taken when there is a well-founded assumption that the juvenile can harm himself/herself, his/her family or society (Mexico). In Guyana, a juvenile who begs or frequents the company of, for instance, thieves and prostitutes may be tried for a "status offence". In Bolivia, when the acts committed constitute minor misconduct equivalent to the concept of "status offences", the juvenile will be warned only.

64. In some other countries the proceedings against juveniles for "status offences" are usually resolved without a formal intervention of the Court (Philippines). In Japan, the family court may take educative measures for the benefit of juvenile delinquents, but they shall not impose any criminal sanction. Jamaica stated that any constable or authorized person may bring before a juvenile court a minor in need of care and protection.

Compatibility

65. The legal definition of "juvenile" can vary according to various parameters sharing a common factor: the age of the individual. In many countries the term "juvenile" is considered valid until the achievement of the age of majority, which is usually 18 or 21 years.

66. In some cases, the definition of "juvenile" for purposes of jursdiction is identified with a specific period of the life of the individual, considered as a transition from childhood to adulthood. Lower and upper age limits generally define this transition period.

67. The minimum age for criminal responsibility does not necessarily correspond to specific correctional measures; it rather marks the age of the individual at which the judicial system is expected to take action. In this connection, younger juveniles may often be required to undertake corrective education, the sentence they have to serve could be reduced in comparison with that of adults, they could not be imprisoned nor placed in preventive detention.

68. In the view of the Special Rapporteur, the question of the minimum age for liability before juvenile courts, where this exists, is one of the most controversial points mainly because of two factors:

(a) The different perceptions of the age at which an individual begins to be conscious of his/her responsibility in society;

(b) The legal provisions for the imposition, the adjustment and the execution of penalties, according to the seriousness of the crime.

69. Certain categories of juvenile, those who have committed serious crimes or who are recidivists, are tried as adults without taking into account either their age or the overall circumstances in which the crime was committed. In the countries whose legislation allow juveniles to be tried as adults, the decision of the court could be strongly influenced by other factors, such as the nature of the crime and its notoriety, rather than the age of the juvenile and her/his maturity. If a child should normally be entitled to a series of specific rights up to the age of 18 years, consideration should also be given to his/her emotional, mental and intellectual maturity before holding him/her responsible for anti-social behaviour.

70. Although the pertinent international standards do not indicate a specific age limit for criminal responsibility, there seems to be a tendency in international law to recognize 18 as the age of majority for penal purposes. Article 1 and article 40.3(a) of the Convention on the Rights of the Child can be evaluated in this connection. The same applies for the United Nations

Rules for the Protection of Juveniles deprived of their Liberty where a juvenile is defined to be a person under the age of 18 (rule 11, para. (a)). Worth mentioning is article 6 of the International Covenant on Civil and Political Rights which provides that a sentence of death shall not be imposed on persons below 18 years of age.

71. The Special Rapporteur wishes to seek the views of the other members of the Sub-Commission as to how to approach this subject in the absence of internationally adopted rules.

C. Detention pending trial

72. The penal and juvenile codes in most countries outline legislative policy on the subject. In some countries national laws allow pre-trial detention only under exceptional circumstances (Austria, Congo, Cuba, Philippines, Senegal, Turkey, United Arab Emirates, Uruguay, Venezuela). Most countries, while recognizing that pre-trial detention should be exceptional, allow it lawfully in certain circumstances. Usually these periods of detention vary in length, often specific to each case and depending on the juvenile's age (Argentina, Bahamas, Bahrain, Chad, China, Costa Rica, Denmark, Egypt, Finland, France, Iraq, Jamaica, Japan, Jordan, Madagascar, Malta, Saint Vincent and the Grenadines, Switzerland, Yugoslavia). In a few countries, detention is used when the opinion exists that it is necessary in view of the juvenile's character (Argentina, Jamaica, Philippines, Saint Vincent and the Grenadines). Grounds such as the following are used to justify such detention: if the juvenile is "unruly", behaves badly, is unwilling to change, fails to comply with conditions for alternative custody, poses a threat to his own life or the safety of others, if there is a fear of repetition (France) or if there is a possibility that the juvenile will not appear in court (Jordan, Yugoslavia). Another factor taken into consideration in establishing an exceptional circumstance is the type and/or severity of crime committed (Costa Rica, Iraq, Mexico, Saint Vincent and the Grenadines).

73. There is a great disparity among countries as to the percentage of juveniles detained pending trial and the length of such detention. Some countries detain up to 4 per cent of juveniles either charged or not charged pending trial (Bahamas, Costa Rica, Denmark, Finland, Madagascar). Other countries state that they detain 6 per cent (Japan), 7.2 per cent (China), 12 per cent (Bahamas), 20-30 per cent (Jamaica, Saint Vincent and the Grenadines), 53.8 per cent (Senegal), 60-65 per cent (Guyana) or 75 per cent (El Salvador). Other countries cite the numbers of juveniles detained as 24 under 16 years and 500 16-18-year-olds (France), 32 (Switzerland), 15 to 20 per day (Venezuela), 105 (Austria), 286 (Yugoslavia) or 733 (Colombia). Some countries say "many" are detained (Uruguay), and others state either that all juvenile offenders are placed in an observation centre for processing, or that instead of detention the youth are placed in rehabilitation/observation centres (Congo, Mexico).

74. The length of pre-trial detention varies from country to country. In one country, it sometimes lasts more than 24 hours (Uruguay) and in others it lasts about 2 weeks (Bahamas, Guyana). In some countries there is a maximum

length such as 12 days (Venezuela), 28 days (Japan), 1 and a 1/2 months (China) or 3 or 4 months (Costa Rica, Mali, Senegal), or sometimes the length is set between a minimum and a maximum of 1 week to 1 month (Thailand, Yugoslavia) or from 1 to 6 months (Jordan).

Compatibility

75. Although there is agreement that deprivation of liberty should be a measure of last resort, limited to the most serious cases and minimum length of time, custodial measures are a common response to juvenile delinquency and are often used without taking into consideration their counter-productive effect on young persons. The drawbacks associated with the deprivation of liberty can produce effects particularly detrimental to young persons, such as those caused by cruel and inhumane treatment or punishment and torture.

76. Given the fact that a child is not an autonomous member of the society, the elements which should influence the decision to release a juvenile before the trial should be evaluated in a different way than those usually used in deciding to release an adult.

77. In particular, juveniles who have not been tried should be presumed innocent and should be separated not only from adult offenders but also from convicted juveniles in order to avoid turning deprivation of liberty under such circumstances into a "school of crime".

78. Some countries recognize in national law the presumption that pre-trial detention should be absolutely exceptional. Most countries, while recognizing that pre-trial detention should be exceptional, permit it in their laws in specific cases for short periods of time, taking into account the juvenile's age. A minority of the countries that sent in replies see pre-trial detention as acceptable. In some countries, pre-trial "placement" or "periods of observation" in "rehabilitation institutions" are employed in place of detention.

79. While most countries detain less than 7 per cent of juveniles charged with an offence, a considerable number detain 30 per cent or more. The duration of detention pending trial in countries where it occurs ranges from less than 24 hours to several months, 1-3 months being the average.

80. Most countries employ measures such as the release of the juvenile into the custody of family or guardians in order to avoid detention pending trial. Some, however, do not have legal provisions for such alternative measures. Although most countries encounter no obstacles to compliance with rule 13 of The Beijing Rules. Some Governments' limited resources prevent them from implementing prevention programmes or maintaining juvenile institutions. Some Governments cite as obstacles the tendency towards crime repetition, homelessness, and the refusal of parents to take responsibility for the youngster.

81. The pertinent international instruments call for the recognition in national law that detention pending trial should be exceptional, as a measure of last resort. The word "exceptional", however, is not defined, nor are

methods for defining "a last resort". This allows for a very broad conceptual interpretation. They also leave it to the discretion of the State to decide exactly how long constitutes "the shortest possible period of time". It is therefore up to the legislative bodies of each State to create reasonable laws to this end. Courts must follow up by weighing all of the facts involved, namely the juvenile's age, his or her character, and the type of crime committed before determining the necessity and terms of pre-trial detention of juveniles.

82. Because it is impossible for a large majority of juveniles to furnish financial guarantees in order to be released pending trial, legislation which requires payment of bail appears to be incompatible with the principle that juveniles should only be detained as a last resort.

83. Apart from the problems stated above, the Special Rapporteur is quite alarmed by the high number of juveniles who are held in detention pending trial for offences. Also, it is regrettable that some Governments have indicated that limited resources prevent them from maintaining special juvenile programmes. It is therefore her view that not only should this subject be studied further but such studies must determine the role that international bodies could play to remove the obstacles to compliance with the pertinent international standards.

D. Least possible use of institutionalization

84. From the replies received, 20 countries (Austria, Bahamas, Bahrain, Bolivia, Chad, China, Costa Rica, Cuba, Denmark, Finland, Japan, Jordan, Madagascar, Mali, Philippines, Senegal, Sweden, Switzerland, Thailand, Yugoslavia) have indicated that it is possible to dispose of juvenile cases by "diversion", that is the disposition of a juvenile case without resorting to a formal trial by the competent authority when the offence is not serious and the penalty would normally be up to 5-6 months (Finland), when the offence could be solved by an agreement among the families involved (Congo, Jordan), through conciliation (Austria), or through a warning (Senegal). In Japan, the family court, which has general jurisdiction over juvenile delinquency cases, may dismiss a case without a hearing if the court finds even such procedure unnecessary. In Yugoslavia, the public prosecutor decides if it possible to dispose of a juvenile case without resorting to a formal trial. In France, the penal law does not expressly recognize the possibility of disposing of juvenile cases by diversion. Convicted juveniles will be employed in social work in order to compensate the victim promptly.

85. The most resorted-to disposition measures are the following:

(a) Care, guidance and supervision orders (26 countries);

(b) Probation (25 countries);

(c) Orders concerning foster care, live-in communities or other educational settings (24 countries);

(d) Commitment to a close detention facilty (24 countries);

(e) Financial penalties, compensation and restitution (23 countries).

86. Only 18 countries gave the percentage of cases in which non-custodial measures are applied. This percentage ranges from 10 per cent (Bangladesh) to 99 per cent of the convicted (Japan). Senegal stated that 90 per cent of the custodial measures are served in an open detention facility. Madagascar underlined that the percentage refers only to the cases treated in its capital city. Mali stated that, even though the percentage of non-custodial cases was not available, custodial cases are rare.

87. Sixteen countries (Argentina, Austria, Bolivia, China, Congo, Cuba, France, Iraq, Japan, Malta, Philippines, Sweden, Switzerland, Tuvalu, Ukraine SSR, Yugoslavia) stated that there are no obstacles to full compliance with the principle that the placement of a juvenile in an institution should always be a measure of last resort and for the minimum necessary period.

88. Six countries (Bahrain, El Salvador, Jordan, Madagascar, Senegal, Tunisia) described the main obstacles to the least possible use of institutionalization as linked to the family environment of the juvenile, continuing and persistent family problems (Jordan, Senegal), lack of family support and family refusal to accept the juvenile again (Madagascar), family breakdown (Tunisia), family not prepared for the release of the juvenile (Bahrain), socio-economic conditions of the family (El Salvador). Other socio-economic circumstances which contribute to juveniles serving their penalty in an institutional environment are abandonment of the juveniles by their families (El Salvador), juvenile overpopulation (Mali), inability to find people worthy of confidence as alternatives to the family (Madagascar), unemployment (Tunisia). In Guyana, the major obstacles are lack of supervision and care outside of the institutions and the socio-economic environment to which juveniles belong.

89. Other factors cited include lack of institutional facilities (Chad), insufficient alternate facilities such as foster homes (Bahamas), protective and paternalistic approaches to questions concerning juveniles in the legislation (Uruguay), the gravity of the offence (Tunisia). In Finland, a juvenile condemned to serve a sentence of more than two years cannot be released. Mexico stated that juvenile prisons are non-existent in its territory but that it has "juvenile rehabilitation centres and juvenile treatment units".

90. Generally, financial constraints affect the administration of law and the possibility of implementing socio-economic projects for juveniles.

Compatibility

91. The aim of the pertinent international standards is to preserve the juvenile from contacts with a judiciary system based mainly on the repression of criminal phenomena. The disposition of a juvenile case without resorting to a formal trial by the competent authority, the application to juvenile

offenders of non-institutional disposition measures such as their (professional) involvement in social work in order to serve a sentence, the use of non-custodial measures and the placement of a juvenile in an institution for the minimum necessary period are the main elements in starting a process of real rehabilitation.

92. Sentences applicable to juveniles should not be determined according to the criteria of the sentences applicable to adults convicted for the same offence (i.e. one half or two thirds of the adult sentence). This automatic adaption would openly violate the right of every child to such measures of protection as are required by her/his status as a minor.

93. The Special Rapporteur is happy to learn from the replies that were received that about half of the countries have legally embedded ways to dispose of juvenile cases by "diversion" or other alternatives.

94. She has also learned with interest that in some cases, convicted juveniles are not detained but are given employment.

95. Many countries have indicated that although there are no formal obstacles to full compliance with the pertinent international standards on this subject, other, sometimes financial, reasons prevent them from adhering to the principle of least possible use of institutionalization. In her view, this is a subject which could be addressed by international bodies. For those countries where no formal ways of disposition exist, and more information should be obtained on the reasons why.

E. Objectives of institutional treatment

96. Fourteen countries have replied that their national legislation incorporates the principle that rehabilitation is the "essential aim" of institutional sentences (Colombia, Costa Rica, France, Iraq, Japan, Jordan, Mali, Mexico, Philippines, Senegal, Thailand, United Arab Emirates, Venezuela, Yugoslavia). In 12 countries, rehabilitation programmes take various forms, and are not necessarily mandatory in sentencing (Bangladesh, Bolivia, China, Denmark, Egypt, El Salvador, Finland, Madagascar, Panama, Saint Vincent and the Grenadines, Sweden, Tunisia). In some countries, rehabilitation or reintegration programmes are inadequate or non-existent (Argentina, Brunei Darussalam, Chad, Tuvalu, Uruguay).

97. In Costa Rica, the maximum length of sentences imposed on juveniles depends on the juvenile's age at the time the crime was committed and in Malta, sentencing is adjusted according to age. In Sweden, if a person under 21 has committed a crime, his or her youth shall be taken into account when punishment is meted out, and such a person may be sentenced to more lenient punishment than prescribed for the offence. In both Egypt and El Savador, sentences are indefinite and a maximum does not exist. In Panama, a maximum does not exist, and sentencing is specific to the case and situation. In Uruguay the maximum sentence is 10 years or until the juvenile reaches age 23, in Bangladesh age 18, in Mali age 21, and in Thailand the sentence cannot exceed the age of 24. In France, the maximum juvenile sentence is one half the length of an adult sentence; Austria has the same law with the stipulation of a 15-year maximum. According to Tuvalu's system,

island courts can give a maximum sentence of one month, and other courts have no maximum. In Guyana, the maximum sentence is three years except in the case of murder when the "President's Pleasure" is relied on: the President only may determine sentencing. Madagascar divides maximum sentencing into age groups: ages 13-16 receive 5-20 years and ages 16-18 receive 10 years to life. In the United Arab Emirates, sentencing over one week is up to the competent court. In Chad the maximum sentence is six months, in Switzerland it is one year, in the Congo it is three years, in Iraq and Venezuela it is five years, in Denmark it is eight years, in Yugoslavia 10 years, in Bahrain 3-10 years, in Finland and Jordan 12 years, in China 15 years, in Tunisia and Senegal 20 years, in Argentina 25 years to life, and in the Bahamas, Japan and Saint Vincent and the Grenadines the maximum sentence is life imprisonment.

Compatibility

98. Several of the pertinent international standards expressly cite the principle that rehabilitation shall be the essential aim of institutional sentences imposed on juveniles. Many countries, though not all, state that legislative provisions incorporate this principle into national law.

99. Because international instruments covering objectives of institutional treatment define neither age limits nor "treatment" to be imposed (although they suggest education and vocational training), countries that do not list rehabilitation as the "essential aim" but nevertheless employ various rehabilitative measures can be considered to be in compliance with the instruments. In one country the law holds that rehabilitation shall be the "essential aim" of institutional sentences only for those under 16 years old. Education and/or social rehabilitation programmes are available for those who would like to participate in many countries. In another country, education is pursued but other social programmes are optional, and in yet another country the court orders the programme as appropriate. In one country, the only requirement is a biological, psychological, social and pedagogical diagnosis. Some countries have no system for social reintegration, or if one exists, it is not used adequately.

100. Most countries have legislative provisions which specifically identify the objectives of sentences imposed on juveniles. Some countries create age groups to impose sentences. To date, some countries do not employ a set of principles applying expressly to juveniles.

101. Most countries have educational or vocational training programmes.

102. In addition, juvenile prisoners usually have the opportunity to participate in a variety of activities, such as woodworking, agriculture, hairdressing, sewing, sports (including team sports), the arts, and sundry job training. A few countries allow the detainees to associate with private enterprise. This is a useful way to continue or create ties between the juvenile and the wider community, and will also facilitate his/her reintegration into society. Some countries provide individual or group psychotherapy, character-building programmes, socio-cultural assistance, or parents' classes. A few countries incorporate normal instruction into their rehabilitation activities. One country uses religious instruction only to prepare the juvenile for social reintegration. In another country, a new

concept of humanization of punishment has been introduced. Yet another country intends its activities such as education and manual projects not to be rehabilitative but rather to keep the juveniles busy.

103. Most of the countries state that they encounter no obstacles to full compliance with the principle that rehabilitation and reintegration should be the essential objectives of the deprivation of liberty of juveniles, as stated in the pertinent international instruments. Of the obstacles cited by those countries which encounter them, the most common is a lack of financial, material and/or human resources as well as the coordination needed to utilize them. Other obstacles include: lack of economic stability or poverty, lack of family stability and support, lack of employment opportunities, a lack of educated law enforcement officials and trained staff, and various socio-cultural views and attitudes supporting a negative opinion of juvenile delinquents and the belief that they cannot be reformed.

104. In view of the above, the Special Rapporteur is of the opinion that apart from the obstacles put forward by the countries which do not comply with the international instruments, the notion that the essential objectives of the deprivation of liberty of juveniles are rehabilitation and reintegration is present. Ways should be explored as to how to tackle these obstacles. She is, however, alarmed by the length of detention in some of the countries and wishes to take this up as an urgent issue.

F. Separation of adults and juveniles in penal institutions

105. Most of the national legislation of the countries which replied to the questionnaire expressly prohibit the detention of juvenile offenders together with adults. Six countries (Argentina, Bahamas, Bahrain, Iraq, Mexico, Switzerland) stated that there are no obstacles to full compliance with this principle.

106. Other countries where the legislation prohibits the detention of juveniles with adults (Bolivia, Chad, Costa Rica, Madagascar, Mali, Philippines, Senegal and Thailand) stated that obstacles such as lack of adequate facilities and trained personnel, prison overcrowding, and lack of financial resources earmarked especially for projects regarding youth hinders compliance with the international standards.

107. One country (Colombia) stated that in March 1990, the entry into force of the new Juvenile Code was postponed for a period of five years. An arrested juvenile should be taken to a specialized juvenile reception centre. Juveniles found guilty of rebellion, sedition, rioting, drug trafficking or offences covered by the Anti-Terrorist Law should be detained in the juvenile blocks available in Colombian prisons.

108. Cuba stated that the treatment of juveniles with behavioural problems is not possible within the penal system.

109. In Uruguay, neither criminal nor juvenile legislation embodies the principle of the separation of adults and juveniles in penal institutions.

This principle is nevertheless respected since the International Covenant on Civil and Political Rights was adopted and ratified by Uruguay and forms part of its internal law.

110. In Denmark, the law does not expressly recognize the principle that juveniles deprived of their liberty should be kept separate from adults. Segregation may cause a concentration of young, very active criminals. According to a normalization principle every effort is made to make life in the prisons similar to that led outside the walls. It is important that young criminals receive regular visits from their family. This applies particularly to the distribution to open institutions and to short-term sentences. As for young criminals who are serving their sentence in a closed institution, the age criterion is important. Young criminals under the age of 23 of both sexes who serve their sentence in a closed prison are placed in a special institution.

111. In Venezuela, juveniles in conflict with the law undergo re-educational treatment. Bringing together juvenile offenders with adults is expressly prohibited by law. Exceptions are made for extremely dangerous juveniles.

112. In Finland, the law does not expressly recognize the principle of separation of adults and juveniles. The matter is considered case by case and, apart from the juvenile prisons, there are other prisons where special rehabilitative programmes are applied. Juvenile and older prisoners, considered capable of development, are often kept together.

113. When Sweden ratified the International Covenant on Civil and Political Rights, a reservation was made to the effect that Sweden would not apply the provision in article 10, paragraph 3, concerning the separation of juvenile offenders from adults. The basic view in Sweden is that juvenile offenders should only be deprived of their liberty as a last resort. Consequently, in the few cases where juveniles are sentenced to imprisonment, they have to be placed in normal prisons since there are no prisons in Sweden designed for juveniles. However, special attention will be paid to keeping the young person away from prisoners who may have a detrimental effect on his/her social adjustment. Security arrangements are made where necessary to protect prisoners from each other, irrespective of the age of the prisoner.

114. El Salvador stated that a juvenile offender who has attained the age of 16 is liable to imprisonment in the same facilities designed for adults. Prisoners are separated according to the degree of danger and their age.

115. In Senegal, juvenile offenders are separated into two groups: juveniles from 13 to 18 years of age and older juveniles from 21 to 25 years of age.

Compatibility

116. One of the major concerns of the pertinent international standards is to guarantee the separation of adults and juveniles in penal institutions. The separation should be guaranteed during periods of custody, pre-trial detention and after conviction. Juveniles exposed to contact with adults could be not only exposed to a process of "criminal contamination", but they could be abused by adults in several ways.

117. Whereas most of the international standards postulate that juvenile offenders should be segregated from adults (which is followed in most of the legislations of the countries that sent in replies), some of the pertinent international standards state that it might be in the "best interest of the child" not to separate juveniles from adults while deprived of their liberty. In connection with the concept of the "best interest of the child", in a few countries customary traditions and the availability of financial resources do allow keeping together juvenile and adult offenders, presumably without any danger for the juveniles.

118. In the view of the Special Rapporteur, therefore, the vast majority of the countries comply with the pertinent international standards on this principle. What worries her, however, is that although their national legislations prohibit detention of juvenile offenders together with adults, quite a number of countries indicate that the lack of financial resources prevent them from full compliance. This is a matter which should be further looked into.

IV. COMMENTS BY NON-GOVERNMENTAL ORGANIZATIONS

A. Friends World Committee for Consultation

119. The Friends World Committee for Consultation believes that national legislation concerning youth crime is often inconsistent with the need to correct the structural oppression of young people. Furthermore, it believes that changes to the standards of human rights for young offenders are often influenced by the public's emotional response to human tragedies and by the consequent action of Governments in order to restore confidence in the judicial system. The spirit of a caring community (a community that takes care of the problems of youth) is not to be protected by a bolstered police force and greater use of legalized punishment, but is nurtured by the extension of economic rights such as meaningful employment and a secure home. Skilled legislators in criminal law will achieve little if community support is not in place to care for those with the greater need: young offenders and their families and victims and their families.

120. The imprisonment of young offenders is a source of many abuses of power. Administrative incompetence often results in inadequate support to staff. The human rights of imprisoned young offenders will aways be in jeopardy if detention centre staff are not provided training that allows them to deal constructively with potential conflicts and violence.

B. International Committee of the Red Cross

121. The International Committee of the Red Cross states that its mandate is to protect and assist military and civil victims of armed conflicts. In this connection, it takes care of the destiny of youth (children), who need special protection.

122. At least 25 disposition (articles) of the 1949 Geneva Conventions and the 1977 additional Protocols relate to the protection of children, victims of war. Among the others, article 77, paragraph 4, of Protocol I reads:

> "If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separated from the quarters of the adults, except where families are accommodated as family units as provided in Article 75, paragraph 5."

This article complements the rules contained in the international instruments for the protection of human rights.

C. International Council for Adult Education

(Comment on "the objectives of institutional treatment")

123. The International Council for Adult Education has worked in the field of crime prevention and criminal justice for the past eight years, with particular emphasis on education in prisons for adults, as well as for juveniles. It believes that the educational opportunities offered juveniles in institutions suffer from the same deficiences that characterize educational programmes in penal institutions for adults. They are inadequate and of

inferior quality, with only a few exceptions. Despite the fact that the majority of juveniles in prison can learn and can be motivated to learn, education is often thought of by penal administrators as a time-filling or "baby-sitting" activity, contributing to the tranquility of the institutional facilities.

124. In the field of education, The Beijing Rules seem clear enough. We suggest that in this field what needs review is actual performance.

D. International Federation of Social Workers

125. The International Federation of Social Workers will concentrate its attention and activity on those children and their families who do not have satisfactory, secure environments, and who find themselves in a marginal situation in society. It will work vigorously to oppose all forms of physical and mental ill-treatment (including physical punishment) and neglect of children, and to abolish the imprisonment of minors.

126. It will promote a change in the age of criminal responsibility to age 18, and will work towards the establishment of humane small institutions, homes and rehabilitation programmes as an alternative for those young people who are now imprisoned.

127. The Federation recommends that the numbers of juveniles going through the formal system should be identified and reduced by diversion or interception, the number of special juvenile units in police organizations should be evaluated and appropriately increased, detention facilities which cater exclusively to youth shall be developed. Measures to integrate the juvenile/minor offender with the rest of society should be strengthened and measures should be formulated for decriminalizing certain prohibited acts such as vagrancy and the violation of local laws where no victims are involved.

CONCLUSIONS

128. The administration of juvenile justice and the protection of youth have undergone over the years a progressive evolution of thought and important achievements have been made in conjuction with worldwide changes in socio-economic and cultural situations.

129. Recently, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, The Beijing Rules, and the Convention on the Rights of the Child, made a major contribution to the protection of the rights of juveniles in conflict with the law. The Rules have inspired reform and innovation in juvenile justice all over the world. They advocate the least possible use of institutionalization; increased recourse to diversion; establishment of juvenile courts and the use of separate facilities for juvenile offenders; professionalization of personnel dealing with juveniles in conflict with the law; decriminalization and depenalization; respect of substantive and procedural rights and the abolition of capital and corporal punishment for juveniles.

130. As a matter of fact, millions of young people are subjected to disturbances affecting their social integration. Children are more vulnerable to entrapment in irregular situations, and consequently they are in danger of lapsing into delinquency. Research has demonstrated that situations of social risk can be produced by factors related to the inherent characteristics of the child such as, for example, a congenital physical or mental disability; the relationship between the child and her or his parents; and the socio-economic circumstances in which the child lives.

131. Serious deficiences emerge from the replies to the questionnaire. These are:

(a) Lack of commitment on the part of those authorities who should provide adequate social policies and programmes;

(b) Antiquated legislation which does not reflect the evolution of the rights of juveniles;

(c) Obsolete facilities and infrastructures which do not meet the requirements for a prompt rehabilitation of detained juveniles;

(d) Widespread ignorance of the international standards concerning juveniles' rights and, as a direct consequence, lack of training for those officers and assistants who institutionally deal with juveniles' real problems.

132. The application of the Riyadh Guidelines will play a fundamental role in the prevention of juvenile delinquency. The philosophy of the Riyadh Guidelines is that prevention of juvenile delinquency may be far more effective than mere repression, which is only a transitory measure. In this connection, the Guidelines adopt a child-centred orientation to promote the well-being of juveniles from their childhood; according to paragraph 3, "young persons should have an active role and partnership within society, and should not be considered as mere objects of socialization or control". The identification of situations of social risk, their causes and circumstances,

and the provision of conditions for the normal and healthy development of children are the main factors for a balanced evaluation of the plans for prevention.

133. The existence of specialized juvenile courts guarantees the respect of the rights of juveniles, and youth generally, as they are established by the international instruments concerning human rights and other international instruments concerning juvenile rights. These measures would be correctly implemented where juvenile justice is managed by specially trained personnel such as police officers, judges, juvenile wardens, teachers and the like. In those countries in which juvenile courts do not exist because of well-founded reasons, the legal system should at least implement a pertinent legal code for juveniles.

134. Although the perception of the concept of maturity and responsibility of the individual can influence the provisions concerning the absolute minimum age of criminal liability, countries should align their juvenile codes to the provisions set up in The Beijing Rules and in the Convention on the Rights of the Child particularly. The establishment of categories of juveniles by age would be useful but not exhaustive or fully satisfactory. Each juvenile should be evaluated on a personal basis, taking into full account the socio-economic environment to which she/he belongs. A child should normally be entitled to a series of specific rights up to the age of 18 years and due consideration should be given to her or his emotional, mental and intellectual maturity before holding her or him responsible for anti-social behaviour. Alternative measures, such as the release of juveniles into the custody of family or guardians, should be implemented in lieu of pre-trial detention. Thus, the question of release shall be considered without delay by the competent official.

135. The possibility of disposing of juvenile cases by "diversion", that is the disposition of a juvenile case without resorting to a formal trial by the competent authority, should be foreseen by legislation whenever the age and the personality of the convicted, the gravity of the crime, the length of the penalty and the overall circumstances will allow it.

136. The possibility of serving the sentence in non-institutional premises, and the employment of the convicted juvenile in social work and in other alternative occupations will prevent the juvenile from being exposed to organized crime, and will give her/him a hope for a brighter future.

137. Although many countries consider rehabilitation to be the essential aim of institutional and non-institutional treatment, an equal number do not. With a view to diminishing the number of criminals and the gravity of offences, the importance of rehabilitative programmes is fundamental. Each individual should have the chance to be integrated in society and to lead a crime-free life. Whether or not a major contribution to this objective is made depends wholly on the care and guidance a juvenile receives during the treatment.

138. The separation of juvenile and adult offenders should be guaranteed not only during the treatment, but also in all stages of the juvenile's conflict with the law. Measures to establish a fruitful contact between juveniles and

adults, with the purpose of a complete rehabilitation of both, are already implemented in those countries with advanced penal systems and adequate financial resources.

139. The above paragraph introduces one of the most recurrent highlights of the replies to the questionnaire: the lack of financial and material resources which appears to be the major impediment to full compliance with the international standards. There is little doubt that the scarcity of financial resources for the improvement of juvenile justice should be evaluated in a global context. The rising incidence and increasing seriousness of juvenile delinquency in many countries may be precipitated by certain socio-economic problems often associated with development. As a matter of fact, there are several Governments that do not deem it economically convenient to invest resources in the social field and consequently in juvenile justice.

RECOMMENDATIONS

140. The role of United Nations bodies, intergovernmental and non-governmental organizations in the application of the international standards concerning juvenile justice is fundamental. Through their channels, it will be possible to increase awareness of the question of juvenile justice and to identify the most urgent priorities of each country. It is recommended that this theme should be the object of a study at the next session of the Sub-Commission.

141. It is recommended that in order to respect the rights of juveniles, and in order to establish a global policy for delinquency prevention, all countries should review their legislation, if they have not done so, with the view to ensuring compatibility with all the existing international standards.

142. Trying juveniles as adults, as well as detaining them, should be forbidden. Legal assistance, including free legal assistance for those in need, should be guaranteed to juveniles as well as adults. As regards non-custodial measures, legislation should take into consideration rule 2.2 of the United Nations Standard Minimum Rules for Non-custodial Measures, which reads: "The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status".

143. The prompt implementation is recommended of paragraph 11 of General Assembly resolution 45/113, which urges all relevant bodies of the United Nations system, in particular the United Nations Children's Fund, the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders and all concerned intergovernmental and non-governmental organizations, to collaborate with the Secretary-General and to take all the necessary measures to ensure a concerted and sustained effort within their respective fields of technical competence to promote the application of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In the same resolution, paragraph 12, the General Assembly invites the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument with a view to promoting the application of its provisions.

144. Furthermore, in paragraph 10 of its resolution 45/112, the General Assembly invites the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider the United Nations Guidelines for the Prevention of Juvenile Delinquency with a view to promoting the application of their provisions.

145. In the light of these recommendations, the Special Rapporteur should prepare a report to evaluate the application of the provisions of these new international instruments recently adopted. The Secretary-General should provide the Special Rapporteur with the necessary assistance in the preparation of such a report, to be presented to the Sub-Commission at its forty-fourth session.

Annex

G/SO 314 (3-3-13)

QUESTIONNAIRE ON THE APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF JUVENILES DEPRIVED OF THEIR LIBERTY

I. Definition of "juvenile" under national law

A. What is the legal definition of "juvenile" in your country?

B. What is the age of criminal responsibility in your country? Please describe:

- absolute minimum age limit;

- other age limits, if any, for criminal responsibility from that of adults.

C. At what age may a person charged with an offence be tried as an adult?

D. Are there any conditions and procedures under which juveniles are tried as adults? If so, what are they and how frequently does this occur in practice?

E. Does the law allow juveniles to be proceeded against for "status offences", that is, any specific behaviour that would not be punishable if committed by an adult? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 3.1.)

II. Detention pending trial

A. In what circumstances does the law permit the detention pending trial of juveniles by court order?

B. Does the law permit the police to detain a juvenile without a court order? If so, in what circumstances and for how long?

C. In practice, what percentage of juveniles charged with an offence are detained pending trial, and what is the average length of this detention?

D. Are juveniles detained pending trial kept separate from adults and from convicted juveniles? For this purpose, are separate detention facilities used? (See International Covenant on Civil and Political Rights, article 10; United Nations Standard Minimum Rule for the Administration of Juvenile Justice 13.4.)

E. If the law permits detention of juveniles by the police, do the police have special facilities exclusively for juveniles? If not, what type of facilities are employed for the detention of juveniles?

F. Are there legal provisions for replacing detention pending trial by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 13.2.)

G. Is a juvenile deprived of liberty entitled to challenge the legality of the title of detention before a court by habeas corpus, amparo or similar procedure? (International Covenant on Civil and Political Rights, article 9.)

H. What are the main obstacles, if any, to full compliance with the principle that detention pending trial should be imposed only in exceptional circumstances? (International Covenant on Civil and Political Rights, article 9.)

III. Least possible use of institutionalization

A. Is it possible in your country to dispose of juvenile cases by "diversion", that is the disposition of a juvenile case without resorting to formal trial by the competent authority? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 11.1.)

B. What is the availability and extent of application to juvenile offenders of the following disposition measures:

(i) Care, guidance and supervision orders;

(ii) Probation;

(iii) Community service orders;

(iv) Financial penalties, compensation and restitution;

(v) Intermediate treatment and other treatment orders;

(vi) Orders to participate in group counselling and similar activities;

(vii) Orders concerning foster care, living communities or other educational settings;

(viii) Commitment to an open detention facility;

(ix) Commitment to a closed detention facility;

(x) Other relevant orders.

(See United Nations Standard Minimum Rule for the Administration of Juvenile Justice (18.1).)

C. In what percentage of cases are non-custodial versus custodial measures applied to juvenile offenders?

D. What are the main obstacles, if any, to full compliance with the principle that the placement of a juvenile in an institution should always be

a disposition of last resort and for the minimum necessary period? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 19.1.)

IV. Objectives of institutional treatment

A. Are there laws outside the penal law field under which juveniles can be deprived of their liberty, for example, in connection with states of emergencies or in cases relating to immigration?

B. Does the law identify the principles, interests and objectives that should guide sentencing and treatment of juvenile offenders?

C. What types of educational or rehabilitative programmes are provided in detention facilities for juvenile offenders?

D. Do specialized juvenile courts exist, and if so, is their number and distribution sufficient to ensure that all cases involving juveniles are handled by such courts?

E. Can a criminal court or any authority other than a juvenile court deprive juveniles of their liberty? If so, under what circumstances?

F. What is the maximum period of deprivation of liberty to which a juvenile can be sentenced?

G. Can a juvenile be sentenced to detention for an indeterminate period? If so, which authority determines when the juvenile offender can be released?

H. Which authorities are empowered to determine the institution best suited for the treatment of a juvenile offender?

I. What are the main obstacles, if any, to the full compliance with the principles that promoting the social re-integration of juveniles and encouraging their assuming constructive roles in society are the essential objectives of deprivation of liberty? (See Convention on the Rights of the Child, article 40; United Nations Standard Minimum Rule for the Administration of Juvenile Justice 26.1.)

V. Separation of adults and juveniles in penal institutions

A. Does the law expressly recognize the principle that juveniles deprived of their liberty should be kept separate from adults? (See International Covenant on Civil and Political Rights, article 9; United Nations Standard Minimum Rule for the Administration of Juvenile Justice 26.3.) If so, what are the main obstacles, if any, to full compliance with this principle?

B. Are there any special situations, recognized by the law or regulations, in which bringing together juvenile offenders with adults is considered to be beneficial for the juveniles concerned? If so, please describe and provide the frequency of these situations in practice.

C. Are there situations in which juvenile offenders are not kept separate from adults because of practical difficulties? If so, please provide the frequency of these situations in practice and describe the safeguards, if any, applied in order to protect the juveniles and prevent possible abuses.

D. Do "mixed" or "multi-purpose" detention facilities designed for both adults and juveniles exist? If so, what measures are taken to provide juveniles with the programmes best suited to their needs and their well-being, and how are they protected against dangers resulting from contact with adult offenders?

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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Note by the Secretary-General

In accordance with its resolution 1990/22, paragraph 5, the attention of the Sub-Commission is drawn to Commission on Human Rights resolution 1991/42 of 5 March 1991 by which the Commission, having taken note of the analysis and recommendations formulated in the revised report on the practice of administrative detention (E/CN.4/Sub.2/1990/29 and Add.1), submitted by Mr. Louis Joinet to the Sub-Commission, decided to create, for a three-year period, a working group composed of five independent experts, with the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned.

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